

AGREEMENT WITH OUTSIDE COUNSEL

THIS AGREEMENT ("this Agreement") is between the State of Indiana acting by and through the Office of the Indiana Attorney General (hereinafter the "State") and Garrison Law Firm LLC (hereinafter "Counsel").

WHEREAS, the State desires to engage Counsel to assist in *handling all aspects of asset seizure and forfeitures relating to Indiana Code 34-24-1 through 2*, (the "Legal Services"), and Counsel represents that it is qualified to provide the Legal Services.

NOW THEREFORE, in consideration of the premises and the mutual promises and covenants set forth below, it is agreed by and between the State and Counsel as follows:

- 1. Duties of Counsel.** Counsel shall perform the Legal Services as requested by the State. Pursuant to IC 4-6-5-3, the Indiana Attorney General hereby appoints, employs and hires Counsel to provide the Legal Services. Counsel shall execute its responsibilities by following and applying the highest professional standards. If the State becomes dissatisfied with the work product or the working relationship with any individual assigned to work on this Agreement, the State may request in writing the replacement of any or all such individuals, and Counsel shall grant such request.
- 2. Consideration.** Counsel shall be paid 30% of the first one hundred thousand dollars (\$100,000.00) in forfeited assets; 20% of the 2nd one hundred thousand dollars (\$100,000.00) in forfeited assets; 10% of the 3rd one hundred thousand dollars (\$100,000.00) in forfeited assets; 5% of forfeited assets thereafter. The maximum amount payable under this Agreement shall not exceed sixty-five thousand dollars (\$65,000.00). Counsel shall submit monthly invoices to the State showing the date and general description of the Legal Services rendered. All payments shall be made in arrears in accordance with Indiana law and state fiscal policies and procedures, and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by Counsel in writing unless a specific waiver has been obtained from the Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Agreement except as permitted by IC 4-13-2-20.
- 3. Term.** This Agreement shall begin on July 1, 2006 and end on June 30, 2007. It may be renewed or extended only by written agreement.
- 4. Access to Files and Records.** The State shall have full, immediate, and unrestricted access to the work product of the Counsel during the term of this Agreement. Upon termination or expiration of this Agreement, Counsel shall, without further request and at no cost to the State, turn over to the State all files relating to the work performed under this Agreement. Counsel acknowledges that it may be required to submit to an audit of funds paid pursuant to this Agreement, and shall maintain at its offices all books, accounting records, and other evidence pertaining to costs incurred and invoiced under this Agreement. Such materials shall be available during the term of this Agreement and for three (3) years from the date of termination or expiration, for inspection by the State or its authorized designee. Copies thereof shall be furnished at no cost to the State if requested.

5. Assignment. Counsel shall not assign any part of the Legal Services to be performed under this Agreement to a third party without the State's prior written consent. Counsel may assign its right to receive payments to such third parties as it may desire without the prior written consent of the State, provided that Counsel gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Agreement and shall not be made to more than one party.

6. Changes in Work. In the event the State requires a major change in scope, character or complexity of the work after the work has begun, adjustments in compensation to Counsel shall be determined by the State in the exercise of its good faith and prudent judgment. Counsel shall not change scope of the Legal Services to be performed pursuant to this Agreement or undertake additional work on behalf of the State unless authorized in writing by the State. No claim for additional compensation shall be made in the absence of a prior written agreement.

7. Compliance with Laws and Licensing Requirements.

A. Counsel, partners, and employees shall comply with all applicable registration and licensing requirements, rules, standards and codes of conduct governing the practice of law and the transaction of business in Indiana. Counsel shall immediately notify the State if any disciplinary actions are brought against it or any of its attorneys. Counsel certifies, by entering into this Agreement, that neither it nor any of its partners, associates or any other attorney associated with Counsel is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Agreement by any federal agency or by any department, agency or political subdivision of the State of Indiana.

B. Counsel agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this Agreement shall be reviewed by the State and Counsel to determine whether the provisions of the Agreement require formal modification.

C. Counsel certifies by entering into this Agreement, that neither it nor its principal(s) is presently in arrears in payment of its taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. Further, Counsel agrees that any payments in arrears and currently due to the State of Indiana may be withheld from payments due to Counsel. Additionally, further work or payments may be withheld, delayed, or denied and/or this Agreement suspended until Counsel is current in its payments and has submitted proof of such payment to the State.

D. Counsel warrants that it has no current or outstanding criminal, civil, or enforcement actions initiated by the State of Indiana pending, and agrees that it will immediately notify the State of any such actions. During the term of such actions, Counsel agrees that the State may delay, withhold, or deny work under any Supplement or contractual device issued pursuant to this Agreement. If a valid dispute exists as to Counsel's liability or guilt in any action initiated by the State of Indiana or its agencies, and the State decides to delay, withhold, or deny work to Counsel, Counsel may request that it be allowed to continue, or receive work, without delay. Counsel must

Counsel must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties.

E. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest under IC 5-17-5.

F. Counsel warrants that Counsel and its subcontractors, if any, shall obtain and maintain all required permits, licenses, and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so is a material breach of the Agreement and grounds for immediate termination of the Agreement and denial of further work with the State.

G. Counsel hereby affirms that it is properly registered and owes no outstanding reports to the Indiana Secretary of State.

H. Counsel agrees that the State may confirm, at any time, that no liabilities exist to the State of Indiana, and, if such liabilities are discovered, that State may bar Counsel from contracting with the State in the future, cancel existing contracts, withhold payments to setoff such obligations, and withhold further payments or purchases until the entity is current in its payments on its liability to the State and has submitted proof of such payment to the State.

I. As required by IC 5-22-3-7:

- (1) Counsel and any principals of Counsel certify that
 - (A) Counsel, except for de minimis and nonsystematic violations, has not violated the terms of
 - (i) IC 24-4.7 [Telephone Solicitation of Consumers],
 - (ii) IC 24-5-12 [Telephone Solicitations] , or
 - (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and
 - (B) Counsel will not violate the terms of IC 24-4.7 for the duration of the Agreement, even if IC 24-4.7 is preempted by federal law.
- (2) Counsel and any principals of Counsel certify that an affiliate or principal of Counsel and any agent acting on behalf of Counsel or on behalf of an affiliate or principal of Counsel:
 - (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and
 - (B) will not violate the terms of IC 24-4.7 for the duration of the Agreement, even if IC 24-4.7 is preempted by federal law.

8. Confidentiality of State Information. Counsel understands and agrees that data, materials and information disclosed to Counsel may contain confidential and protected data. Therefore, Counsel promises and assures that data, material and information gathered, based upon or disclosed to Counsel for the purposes of this Agreement, will not be disclosed to others or discussed with other parties without the prior written consent of the State.

9. Conflict of Interest.

A. Counsel represents and warrants that, after due and diligent inquiry, it is satisfied that it has no Conflict of Interest (as that term is defined in the *Indiana Rules of Professional Conduct*) that will preclude it from providing the Legal Services.

B. Counsel represents and warrants that it has reviewed and is familiar with the statutes and regulations relating to the ethical conduct of state employees. Counsel certifies that, after due inquiry, no partner or any spouse or unemancipated child of any partner (collectively, an "Interested Party"), is an employee of the State of Indiana. If an Interested Party is an employee of the State of Indiana, Counsel shall provide the State with an opinion by the State Ethics Commission indicating that the existence of this Agreement and the employment by the State of Indiana of the Interested Party does not violate any statute or regulation relating to the ethical conduct of state employees.

10. Continuity of Services.

A. Counsel recognizes that the Legal Services provided under this Agreement are vital to the State and must be continued without interruption and that, upon expiration or termination of this Agreement, a successor, either the State or another Counsel, may continue them. Counsel shall use its best efforts and cooperation to effect an orderly and efficient transition to a successor, and shall be reimbursed for all reasonable transition costs.

11. Default by State. If the State, sixty (60) days after receipt of written notice, fails to correct or cure any breach of this Agreement, then Counsel may cancel and terminate this Agreement and collect all monies due up to and including the date of termination.

12. Disputes.

A. Should any disputes arise with respect to this Agreement, Counsel and the State agree to act immediately to resolve any such disputes. Time is of the essence in the resolution of disputes.

B. Counsel agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Agreement that are not affected by the dispute. Should Counsel fail to continue to perform its responsibilities as regards all non-disputed work, any additional costs incurred by the State or Counsel as a result of such failure shall be borne by Counsel, and Counsel shall make no claim against the State for such costs.

C. The parties agree to resolve disputes through submission of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to Counsel and the Office of the Attorney General within ten (10) working days after presentation of such dispute for action. The

Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration for a determination, or otherwise the dispute shall be submitted to an Indiana court of competent jurisdiction.

D. The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State of one or more invoices not in dispute in accordance with the terms of this Agreement will not be cause for Counsel to terminate this Agreement, and Counsel may bring suit to collect these amounts without following the disputes procedure contained herein.

13. Drug-Free Workplace. Counsel hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. Counsel will give written notice to the State within ten (10) days after receiving actual notice that Counsel or an employee of Counsel has been convicted of a criminal drug violation occurring in Counsel's workplace.

False certification or violation of the certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Agreement and/or debarment of contracting opportunities with the State of Indiana for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total contract amount set forth in this Agreement is in excess of \$25,000.00, Counsel hereby further agrees that this Agreement is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the inclusion of this certification in all contracts and grants from the State of Indiana in excess of \$25,000.00. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by Counsel and made a part of the contract or agreement as part of the contract documents.

As required by Governor's Executive Order No. 90-5 dated April 12, 1990, Counsel certifies and agrees that it will provide a drug-free workplace by:

A. Publishing and providing to all of its employees a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in Counsel's workplace and specifying the actions that will be taken against employees for violations of such prohibition; and

B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) Counsel's policy of maintaining a drug-free workplace; (3) any

available drug consulting, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace; and

C. Notifying all employees in the statement required by subparagraph (A), above, that as a condition of continued employment the employee will (1) abide by the terms of the statement; and (2) notify Counsel of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; and

D. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction; and

E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and

F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

14. Employment Option. If the State determines that it would be in the State's best interest to hire an employee of the Counsel, the Counsel will release selected employee from any non-compete contracts that may be in effect. This release will be at no cost to the State or the employee.

15. Ethics. Counsel shall abide by all ethical requirements that apply to persons who have a business relationship with an agency, as set forth in Indiana Code § 4-2-6 et seq., the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If Counsel is not familiar with these ethical requirements, it should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <<<<http://www.in.gov/ethics/>>>>. If Counsel or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Agreement immediately upon notice to Counsel. In addition, Counsel may be subject to penalties under Indiana Code § 4-2-6-12."

16. Force Majeure. In the event that either party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Agreement.

17. Funding Cancellation. When the director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Agreement, it shall be canceled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

18. Governing Laws. This Agreement shall be construed in accordance with, and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

19. Indemnification. Counsel agrees to indemnify, defend, and hold harmless the State of Indiana and its agents, officials, and employees from all claims and suits, including court costs, attorney's fees, and other expenses caused by any act or omission of Counsel. The State shall not provide such indemnification to Counsel.

20. Independent Contractor. Counsel and the State are acting in their individual capacities and not as employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume any liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees of the other party. Counsel shall be responsible for providing all necessary unemployment and worker's compensation insurance for its employees.

21. Nondiscrimination. As required by IC 22-9-1-10 and the federal Civil Rights Act of 1964, Counsel shall not discriminate against any employee or applicant for employment in the performance of this Agreement with respect to the hire, tenure, terms, conditions or privileges of employment or in any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Acceptance of this Agreement signifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

22. Notice to Parties. Whenever any notice, statement or other communication is required under this Agreement, it shall be sent to the following addresses by U.S. first class mail, postage prepaid.

A. Notice to the State shall be sent to:
Brent Embrey
Office of the Indiana Attorney General
302 W. Washington St., IGCS-5th Floor
Indianapolis, IN 46204

B. Notice to Counsel shall be sent to:
Garrison Law Firm LLC
8720 Castle Creek Parkway, Ste 200
Indianapolis, IN 46250

23. Ownership of Documents & Materials. All documents, records, programs, data, film, tape, articles, memos, and other materials not developed or licensed by Counsel prior to execution of this Agreement, but specifically developed under this Contract shall be considered "work for hire" and Counsel transfers any ownership claim to the State of Indiana and all such matters will be the property of the State of Indiana. Use of these materials, other than related to contract performance by Counsel, without the prior written consent of the State, is prohibited. During the performance of this Agreement, Counsel shall be responsible for any loss of or damage to these materials developed for or supplied by the State and used to develop or assist in the services provided herein while the materials are in the possession of Counsel. Any loss or damage thereto shall be restored at Counsel's expense. Full, immediate, and unrestricted access to the work product of Counsel during the term of this Agreement shall be available to the State.

24. Penalties/Interest/Attorney's Fees. The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, finance charges, interest, or attorney's fees, except as required by Indiana law, in part, IC 5-17-5-1 *et seq.*, IC 34-54-8-5, and IC 34-13-1-6.

Notwithstanding the provisions contained in IC 5-17-5, the Parties stipulate and agree that any liability resulting from the State of Indiana's failure to make prompt payment shall be based solely on the amount of funding originating from the State of Indiana and shall not be based on funding from federal or other sources.

25. Progress Reports. Counsel shall submit progress reports to the State upon request. The report shall be oral, unless the State, upon receipt of the oral report, should deem it necessary to have it in written form. The progress reports shall serve the purpose of assuring the State that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

26. Renewal Option. This Agreement may be renewed under the same terms and conditions subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC 5-22-17-4. The term of the renewed contract may not be longer than the original contract. Exercise of this option is at the sole discretion of the State and is not subject to agreement or acceptance by Counsel.

27. Severability. The invalidity of any section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining sections, subsections, clauses or provisions.

28. Substantial Performance. This Agreement shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any modification thereof.

29. Successors and Assignees. Counsel binds its successors, executors, administrators, and assignees to all covenants of this Agreement. Except as above set forth, Counsel shall not assign, sublet or transfer interest in this Agreement without the prior written consent of the State of Indiana.

30. Taxes. The State of Indiana is exempt from state, federal and local taxes. The State will not be responsible for any taxes levied on Counsel as a result of this Agreement.

31 Termination for Convenience. This Agreement may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in the best interest of the State. Termination of services shall be affected by delivery to Counsel of a Termination Notice at least fifteen (15) business days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The State will not be liable for legal services performed after effective date of termination. Counsel may terminate this Agreement as provided by Rule 1.16, *Indiana Rules of Professional Conduct*. Counsel shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after effective date of termination. Counsel shall be compensated for services herein provided but in no case shall total payment made to Counsel exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date.

32. Termination for Default.

- A. With the provision of thirty (30) days notice to Counsel, the State may terminate this Agreement in whole or in part, if Counsel fails to:
1. Correct or cure any breach of this Agreement;
 2. Deliver the supplies or perform the services within the time specified in this Agreement or any extension;
 3. Make progress so as to endanger performance of this Agreement; or
 4. Perform any of the other provisions of this Agreement.
- B. If the State terminates this Agreement in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and Counsel will be liable to the State for any excess costs for those supplies or services. However, Counsel shall continue work not terminated.
- C. The State shall pay the contract price for completed supplies delivered and services accepted. Counsel and the State shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.
- D. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or equity under this contract.

33. Travel. Expenditures made by Counsel for travel will be reimbursed by the State at the current rate paid by the State and in accordance with the State Travel Policies and Procedures as specified in the current Financial Management Circular. Out-of-state travel requests must be reviewed by the State for availability of funds and for appropriateness per Circular guidelines.

34. Waiver of Rights. No right conferred on either party under this Agreement shall be deemed waived and no breach of this Agreement excused, unless such waiver or excuse shall be in writing and signed by the party claimed to have waived such right.

35. Binding Authority; Non-Collusion and Acceptance. The undersigned attests, subject to the penalties for perjury, they have been duly authorized to execute this Agreement on behalf of the entity designated below, and that they have not, nor has any other partner, associate, member, employee, representative, agent, or officer of the entity designated below, directly or indirectly, to the best of their knowledge, entered into or offered to enter into any combination, collusion, or agreement to receive or pay, and that they have not received or paid, any sum of money or other consideration for the execution of this Agreement, other than that which appears upon the face of this Agreement.

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IN WITNESS WHEREOF, Counsel and the State by their duly authorized representatives having read and understand the foregoing terms of the Agreement have executed this Agreement as of the dates set forth below.

Garrison Law Firm LLC

By: Amey Jain

Atty #: 7061-49

Date: 10/1/06

Indiana Office of the Attorney General

By: Stephen Carter (for)
Stephen Carter, Attorney General

Date: 12-28-06

Indiana Department of Administration

By: Carrie Henderson (for)
Carrie Henderson, Commissioner

Date: 1/19/07

Budget Agency

By: Charles Schalliol (for)
Charles Schalliol, Director

Date: 1-23-07

Form and Legality:

Indiana Office of the Attorney General

By: Stephen Carter (for)
Stephen Carter, Attorney General

Date: 1/25/07